UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

HOLLY SCHERMAN,

Plaintiff,

v.

FARMERS NEW WORLD LIFE INSURANCE COMPANY,

Defendant.

Case No. 16-cv-02851-VC

ORDER GRANTING MOTION TO DISMISS

Re: Dkt. No. 34

Holly Scherman's amended complaint includes breach of contract, bad faith, and negligence claims against Farmers New World Life Insurance Company. All three claims are based on the argument that Farmers was required to maintain Holly as a beneficiary of the life insurance policy owned by her former husband Joe and to provide advance notice to her or her children, Danielle and Zachary, of the lapse for non-payment of Joe's life insurance policy. Had Farmers sent her or her children notice, Holly alleges, they could have paid the policy premiums, the life insurance policy would not have lapsed, and she could have received benefits owed to her under an agreement with Joe when Joe died a short time later. Holly does not argue that she was entitled to notice under any provision of the life insurance policy. She instead alleges in her amended complaint that California's Family Code and Insurance Code required Farmers to provide notice to her or her children before the policy could lapse. Because neither the Family Code nor the Insurance Code required notice in this highly unusual situation, Farmers' motion to dismiss is granted.

Family Code

Although it appears that Family Code sections 2050 and 2051 could impose a notification duty on an insurance company in the appropriate circumstances, no duty was imposed here.

Sections 2050 and 2051 each contain a notice that a party to a divorce proceeding may send to an insurance carrier to safeguard benefits under the policy. The notice under section 2050, to be sent "[u]pon filing of the petition, or at any time during the proceeding," notifies the insurance carrier that the policy may be at issue in the divorce proceeding and instructs the insurer to "maintain the named beneficiaries or covered dependents under the policy . . . until receipt of a court order, judgment, or stipulation between the parties providing other instructions." Section 2051 includes a notice, to be attached to "a copy of the order or judgment endorsed by the court." The notice authorized by section 2051 explains:

> The attached order or judgment requires you to maintain the named beneficiaries under the policy as irrevocable beneficiaries or covered dependents of the policy, and you must administer the coverage accordingly, until the date specified, if any, in the order or judgment, or until the receipt of a court order, judgment, or stipulation providing other instructions.
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> You are further instructed to send notice to the named beneficiaries, covered dependents, or other specified persons upon any cancellation, lapse, or change of coverage, or change of designated beneficiaries under this policy.

Holly's lawyers sent a section 2050 notice to Farmers in July 2008. Farmers acknowledged that notice in August 2008. Once Holly and Joe reached a marital settlement agreement, Holly's lawyers sent a copy of that agreement to Farmers in September 2008 along with a notice that resembles a notice under section 2051. They did not hear back from Farmers, so they sent the marital settlement agreement again in March 2011 with the same notice. Holly does not allege that her lawyers ever sent Farmers a copy of the order of the divorce court adopting the marital settlement agreement or a copy of the 2014 stipulated order that superseded the marital settlement agreement.

While the notice contained in Family Code section 2051 describes the sender of the notice as an irrevocable beneficiary of the life insurance policy, and Holly's lawyers described her as an irrevocable beneficiary in the September 2008 and March 2011 letters to Farmers, the marital settlement agreement between Joe and Holly did not actually make Holly an irrevocable beneficiary. The life insurance policy also did not make Holly an irrevocable beneficiary. *See In re Marriage of O'Connell*, 10 Cal. Rptr. 2d 334 (Ct. App. 1992). And the agreement did not itself name Holly as a beneficiary of the policy. *See W. Coast Life Ins. Co. v.* Clark, 24 F. Supp. 3d 933, 938 (C.D. Cal. 2014). Instead, the agreement said that Joe would name Holly as a beneficiary and expressly contemplated Joe reducing the amount of Holly's benefits as he made other payments to her. The agreement did not require Holly's consent in the reductions, though she was entitled to ask for proof of insurance. Because the marital settlement agreement did not name Holly as a beneficiary and permitted Joe to change the amount of Holly's benefits, Holly was not an irrevocable beneficiary even under her own definition of the term. *See* Pls.' Further Br. re Ct.'s Order Dated Jan. 10, 2017, at 6.

Furthermore, even if the arrangement described in the marital settlement agreement made Holly an irrevocable beneficiary, the documents attached to the complaint show that Holly's former lawyers bungled the process of communicating with the insurance company so badly that no duty could have been imposed on these allegations. Any duties imposed under section 2050 were terminated when Holly's lawyers sent a copy of the marital settlement agreement to Farmers, since the notice in section 2050 only instructs the insurance company to "maintain the named beneficiaries or covered dependents under the policy . . . until receipt of a court order, judgment, or stipulation between the parties providing other instructions." And with respect to potential obligations under section 2051, Holly's lawyers never actually sent the court order to Farmers, even though section 2051 says that the party to the divorce proceeding should send "a copy of the order or judgment endorsed by the court."

What's more, Holly was on notice that Farmers did not believe her to be an irrevocable beneficiary, but her lawyers didn't do anything to clarify her situation. In response to Holly's March 2011 letter, Farmers wrote back to Holly's lawyers in April 2011. The response recognized that Holly was not an irrevocable beneficiary under the marital settlement agreement. Because Holly was not an irrevocable beneficiary, Farmers said it would provide notice to her if the policy were about to lapse but would not provide notice of a change of beneficiary. Holly's lawyers did not respond to this letter to explain why they believed she was an irrevocable beneficiary, or to otherwise protect her rights. If they had, Farmers could have decided that the marital settlement actually did make Holly an irrevocable beneficiary, Holly could have gotten a new court order that more clearly set out her rights under the policy, or Holly could have required that Joe alter his insurance policy to name Holly as an irrevocable beneficiary. Since Farmers told Holly that she would not receive notice of a change of beneficiary, it is unsurprising that Farmers did not send notice when Joe changed the policy beneficiary. And, once Holly was no longer a policy beneficiary, it is unsurprising that Farmers did not send her a notice of the impending lapse of the policy.[1]

Insurance Code

Like the Family Code, the Insurance Code sometimes imposes notification duties on insurance companies, but not in this case. Holly's arguments focused on three sections from the Insurance Code – sections 10173.2, 10113.71, and 10113.72. The sections require insurance companies, prior to the lapse of a life insurance policy for nonpayment, to send notice to the policy owner, someone designated by the policy owner, a "known assignee," someone "assigned a security interest in writing," or an "other person having an interest in the policy." Cal. Ins.

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[1] Under the right circumstances and with proper execution, though, the Family Code provisions could impose a duty. It's true that *Duston v. Metropolitan Life Insurance Company*, an unpublished California Court of Appeal decision, concluded that these Family Code sections did not impose duties on insurance companies based on a reading of the legislative history of these Family Code sections. No. B245453, 2014 WL 786282 (Cal. Ct. App. Feb. 27, 2014). But the California Supreme Court has recognized the limited purposes for which legislative history may be used in determining the meaning of California statutes. *Larkin v. W.C.A.B.*, 358 P.3d 552, 555 (Cal. 2015). And legislative history is of particularly little value when, as here, the relevant content is testimony from a single sponsor of the law rather than from a committee report that is more likely to reflect a shared understanding of the bill's meaning. *Martinez v. The Regents of the Univ. of Cal.*, 241 P.3d 855, 865 (Cal. 2010). Nor is the legislature's decision not to include a provision for joinder of insurance companies in this section dispositive of those companies' duty to provide notice. *But see Duston*, 2014 WL 786282, at *6. There is little reason to look to legislative history in the first place. The words of the notices authorized by the Family Code refer to a duty imposed on insurance companies receiving the notice. For these sections to never impose a duty, Farmers must argue that California law authorizes notices that describe non-existent obligations. The upshot is that these Family Code notices could impose duties on insurance companies in some cases, but, as described above, they did not do so on the unusual facts alleged here.

Code §§ 10173.2, 10113.71, 10113.72. Holly and her children were none of these things, so they were not entitled to notice of the policy's pending lapse under the Insurance Code.

Holly was not an assignee of Joe's life insurance policy under any of the Insurance Code sections using the term, because Joe and Holly never executed an assignment of the policy benefits. Farmers asserts that such an assignment can only ever be made with Farmers as a co-signer on the agreement. Even if an agreement just between Joe and Holly would have been sufficient, though, the marital settlement agreement does not describe an assignment. *See In re Cybernetic Servs., Inc.*, 252 F.3d 1039, 1049 (9th Cir. 2001); *ATS Prod. Inc. v. Ghiorso*, No. 10-cv-4880 BZ, 2012 WL 253315, at *2 (N.D. Cal. Jan. 26, 2012). Instead, it describes actions that Joe will take to name Holly as a policy beneficiary. That is not legally equivalent to assigning a portion of the policy proceeds to her.

Moreover, Holly's children were not entitled to notice as ordinary beneficiaries of the life insurance policy when it lapsed. The common law rule in California is that regular beneficiaries are not entitled to notice of a policy's impending lapse if the notification is not required under the policy. *See Mardirosian v. Lincoln Nat'l Life Ins. Co.*, 739 F.2d 474 (9th Cir. 1984). No Insurance Code section considered in this case appears to require insurance companies to provide notice of a policy's impending lapse to all policy beneficiaries, and Holly has not cited any authority to require such broad notice. Ordinary beneficiaries are not assignees, and a person with an interest in the policy must have something more than the contingent expectancy created by being named a policy beneficiary. *See Grimm v. Grimm*, 157 P.2d 841, 842 (Cal. 1945). Had the California legislature intended to require notice to all beneficiaries, it would have said so.

Holly's strongest argument is that she was an "other person having an interest in the policy" under Insurance Code section 10113.71, but this argument fails as well because, even if she had an interest in the policy while she was a beneficiary, she stopped having that interest once Joe removed her as a policy beneficiary.[2] A life insurance beneficiary named consistent with a marital settlement agreement sent to the insurance company may sometimes be an "other person having an interest" in the policy. But once Joe removed her from the insurance policy, Holly no longer had a cognizable interest in the policy. *See In re Estate of Mitchell*, 91 Cal. Rptr. 2d 192, 201–02 (Ct. App. 1999); *In re Marriage of O'Connell*, 10 Cal. Rptr. 2d at 341. This lack of an interest is further reinforced by the use of the word "known" in the statute to modify both assignee and other person having an interest in the policy. While Farmers may have known that Holly once had an interest in the policy based on receiving the marital settlement agreement, Holly has not plausibly alleged how the insurance company could have continued to know she was such a person after Joe appeared to follow the marital settlement agreement's contemplated process for removing Holly as a beneficiary once the equalizing payments were completed. This is particularly so in light of the fact that Farmers had informed Holly's lawyers that Holly was not an irrevocable beneficiary under the settlement agreement and Holly's lawyers never responded to that communication.

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[2] Farmers points out that this Insurance Code section was not enacted until after Joe had already removed Holly from the policy. *See* 2012 Cal. Legis. Serv. Ch. 315 (A.B. 1747) (West). This

Leave to Amend

At the February 9, 2017 hearing on the motion to dismiss, Holly's counsel sought leave to amend the complaint. Based on what Holly has said so far about the changes she would make if given leave to amend, leave would not be granted. She hasn't alleged facts constituting a claim. However, because Holly has new counsel, free from her previous counsel's apparent conflict of interest, and because her new counsel had only a limited time to prepare for the most recent hearing, she may file a brief explaining what facts she would allege in an amended complaint. That brief is due by February 28, 2017. Farmers may respond by March 7, 2017.

IT IS SO ORDERED.

Dated: February 21, 2017

VINCE CHHABRIA
United States District Judge

just further reinforces that Holly was not an "other person having an interest in the policy" when the policy lapsed.